

Senate Study Bill 3276

SENATE FILE _____
BY (COMMITTEE ON GOVERNMENT
OVERSIGHT BILL BY
CO=CHAIRPERSON COURTNEY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning governmental regulation and accountability by
2 providing for contractual requirements for service contracts,
3 the authority of the citizens' aide, employment rights of
4 employees making a disclosure of information, and providing a
5 prohibition against reprisals relating to health care workers
6 disclosing specified information, and including an
7 implementation provision and providing penalties.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
9 TLSB 6697XK 81
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1 1 DIVISION I
1 2 GOVERNMENT ACCOUNTABILITY == SERVICE CONTRACTS
1 3 Section 1. Section 8.47, subsection 1, Code 2005, is
1 4 amended by adding the following new paragraphs:
1 5 NEW PARAGRAPH. d. The requirement that the party shall
1 6 not provide compensation to an executive of the party in an
1 7 amount that exceeds one hundred ten percent of the
1 8 compensation provided to a comparable state employee.
1 9 NEW PARAGRAPH. e. The authority of a department or
1 10 establishment to terminate the contract if the party to the
1 11 service contract, during the duration of the contract, fails
1 12 to comply with the requirements of this section.
1 13 Sec. 2. Section 8.47, Code 2005, is amended by adding the
1 14 following new subsections:
1 15 NEW SUBSECTION. 5. Prior to entering into a service
1 16 contract with a party, the party seeking to enter into a
1 17 service contract shall submit all of the following to the
1 18 applicable department or establishment:
1 19 a. Information documenting the legal status of the party,
1 20 such as agreements establishing the party pursuant to chapter
1 21 28E or other intergovernmental agreement, articles of
1 22 incorporation, bylaws, or any other information related to the
1 23 establishment of the party.
1 24 b. Information regarding the training and education
1 25 received by the members of the governing body of the party
1 26 relating to the duties and legal responsibilities of the
1 27 governing body.
1 28 c. Information regarding the procedures used by the
1 29 governing body of the party to do all of the following:
1 30 (1) Review the performance of management employees and
1 31 establish the compensation of those employees.
1 32 (2) Review the party's internal controls relating to
1 33 accounting processes and procedures.
1 34 (3) Review the party's compliance with the laws, rules,
1 35 regulations, and contractual agreements applicable to its
2 1 operations.
2 2 d. Information regarding adopted ethical and professional
2 3 standards of operation for the governing body and employees of
2 4 the party, including policies regarding nepotism and conflicts
2 5 of interest.
2 6 e. Information regarding any policies adopted by the
2 7 governing body of the party that prohibit taking adverse
2 8 employment action against employees of the party who disclose
2 9 information about the service contract to the department or
2 10 establishment, the auditor of state, or the office of
2 11 citizens' aide and a statement regarding whether those

2 12 policies are substantially similar to the protection provided
2 13 to state employees under section 70A.28. The information
2 14 provided shall state whether employees of the party are
2 15 informed on a regular basis of their rights to disclose
2 16 information to the department or establishment, the auditor of
2 17 state, or the office of citizens' aide and provided the phone
2 18 numbers of those organizations.

2 19 f. A certification signed by the individual authorized to
2 20 sign contracts for the party stating that the party is in full
2 21 compliance with all laws, rules, regulations, and contractual
2 22 agreements applicable to the party and the requirements of
2 23 this section.

2 24 NEW SUBSECTION. 6. Prior to entering into a service
2 25 contract with a party, the department or establishment shall
2 26 consider the information provided by the party pursuant to the
2 27 requirements of this section to determine whether the party
2 28 has adopted adequate policies and internal controls to ensure
2 29 the party can reasonably be expected to comply with the
2 30 requirements of the service contract. If the department or
2 31 establishment determines from the information provided that
2 32 the party cannot reasonably be expected to comply with the
2 33 requirements of the service contract, the department or
2 34 establishment shall not enter into the service contract.

2 35 Sec. 3. IMPLEMENTATION PROVISION. This division of this
3 1 Act applies to service contracts entered into or renewed by a
3 2 department or establishment on or after July 1, 2006.

3 3 DIVISION II

3 4 CITIZENS' AIDE == DISCLOSURES OF INFORMATION

3 5 Sec. 4. Section 2A.7, subsection 1, Code 2005, is amended
3 6 to read as follows:

3 7 1. The general assembly shall independently and
3 8 intensively review and oversee the performance of state
3 9 agencies in the operation of state programs to evaluate the
3 10 efficiency and effectiveness of the state programs and to
3 11 consider alternatives which may improve the benefits of such
3 12 programs or may reduce their costs to the citizens of the
3 13 state. The legislative services agency shall provide
3 14 technical and professional support for the general assembly's
3 15 oversight responsibility and may seek assistance from the
3 16 office of the citizens' aide in performing the agency's
3 17 responsibility under this section.

3 18 Sec. 5. Section 2C.1, subsection 2, Code 2005, is amended
3 19 to read as follows:

3 20 2. a. ~~"Agency" means all governmental entities,~~
~~3 21 departments, boards, commissions, councils or institutions, a~~
~~3 22 department, board, commission, council, institution, or other~~
~~3 23 governmental body of the state or a political subdivision of~~
~~3 24 the state, a legal or administrative entity created pursuant~~
~~3 25 to chapter 28E, a private entity providing individualized or~~
~~3 26 public services under a contract with a governmental body of~~
~~3 27 the state or a political subdivision of the state, and any~~
3 28 officer, employee or member thereof acting or purporting to
3 29 act in the exercise of official duties, but it or providing
3 30 services enumerated in a contract.

3 31 b. "Agency" does not include ~~mean:~~

3 32 ~~a. (1) Any court or judge or appurtenant judicial staff,~~
3 33 ~~except for the administrative offices and staff of a court or~~
3 34 ~~judge.~~

3 35 ~~b. (2) The members, committees, or permanent or temporary~~
4 1 ~~staffs of the Iowa general assembly.~~

4 2 ~~c. (3) The governor of Iowa or the governor's personal~~
4 3 ~~staff.~~

4 4 ~~d. (4) Any instrumentality formed pursuant to an~~
4 5 ~~interstate compact and answerable to more than one state.~~

4 6 Sec. 6. Section 2C.9, subsection 1, Code 2005, is amended
4 7 to read as follows:

4 8 1. Investigate, on complaint or on the citizens' aide's
4 9 own motion, any administrative action of any agency, without
4 10 regard to the finality of the administrative action, except
4 11 that the citizens' aide shall not investigate the complaint of
4 12 an employee of an agency in regard to that employee's
4 13 employment relationship with the agency unless the complaint
4 14 alleges that the employee's employment relationship was
4 15 impacted by the employee's disclosure of information made
4 16 pursuant to section 8A.417, subsection 4, section 70A.28, or
4 17 section 70A.29. A communication or receipt of information

4 18 made pursuant to the powers prescribed in this chapter shall
4 19 not be considered an ex parte communication as described in
4 20 the provisions of section 17A.17.

4 21 Sec. 7. Section 70A.28, Code 2005, is amended by adding
4 22 the following new subsection:

4 23 NEW SUBSECTION. 5A. Subsection 2 may also be enforced
4 24 through an administrative action pursuant to the requirements
4 25 of this subsection. An employee who is not a merit system
4 26 employee, except an employee covered by a collective
4 27 bargaining agreement, who is discharged, suspended, demoted,
4 28 or otherwise reduced in pay and who believes the adverse
4 29 employment action was taken as a result of the employee's
4 30 disclosure of information that was authorized pursuant to
4 31 subsection 2, may file an appeal of the disciplinary action
4 32 with the public employment relations board within thirty
4 33 calendar days following the effective date of the action. The
4 34 employee has the right to a hearing closed to the public,
4 35 unless a public hearing is requested by the employee. The
5 1 hearing shall otherwise be conducted in accordance with the
5 2 rules of the public employment relations board and the Iowa
5 3 administrative procedure Act, chapter 17A. If the public
5 4 employment relations board finds that the action taken by the
5 5 person appointing the employee was in violation of subsection
5 6 2, the employee may be reinstated without loss of pay or
5 7 benefits for the elapsed period, or the public employment
5 8 relations board may provide other appropriate remedies.
5 9 Decisions by the public employment relations board constitute
5 10 final agency action.

5 11 DIVISION III

5 12 HEALTH CARE WORKERS == DISCLOSURE OF INFORMATION

5 13 Sec. 8. NEW SECTION. 147.105 PATIENT PROTECTION ==

5 14 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.

5 15 1. DEFINITIONS. As used in this section, unless the
5 16 context otherwise requires:

5 17 a. "Health care worker" means any individual employed by
5 18 or under contract with a hospital, health care provider, or
5 19 health care agency to provide health care services.

5 20 b. "Professional standards of care" means authoritative
5 21 statements that describe a level of care or performance common
5 22 to the profession by which the quality of professional
5 23 practice can be judged and which reflect the values and
5 24 priorities of the profession.

5 25 2. A health care worker, who reasonably believes a
5 26 particular practice the health care worker has observed
5 27 occurring at the health care worker's place of employment,
5 28 based on the health care worker's professional standards of
5 29 care or professional code of ethics, is a violation of health
5 30 and safety laws or a breach of public safety that may lead to
5 31 harm to patients, consumers, or citizens, may report the
5 32 information relating to the violation or breach within
5 33 fourteen days of its occurrence to the health care worker's
5 34 supervisor or employer, in order that corrective action can be
5 35 taken. The health care worker shall be protected against
6 1 reprisals or retaliatory or punitive action by the individual
6 2 or institution receiving such a report.

6 3 3. If after a reasonable period of time for correction of
6 4 the violation or breach reported pursuant to subsection 2, the
6 5 health care worker continues to see the particular practice
6 6 occurring in the workplace giving rise to the report, the
6 7 health care worker may disclose information to the licensing
6 8 board, the department, the division of insurance in the
6 9 department of commerce, a member or employee of the general
6 10 assembly, the attorney general, a state-mandated health
6 11 information collection agency, any other public official or
6 12 law enforcement agency, federal government agency or program,
6 13 the governing board of the health care worker's employer or
6 14 institution, the health care worker's professional
6 15 association, or the media, and shall be protected against
6 16 reprisals or retaliatory or punitive actions by the individual
6 17 or institution if disclosure of the information is not
6 18 otherwise prohibited by statute and if the information meets
6 19 any of the following requirements:

6 20 a. Constitutes state-mandated health data required to be
6 21 submitted to state agencies.

6 22 b. Informs state agencies or entities of violations of
6 23 state health, safety, occupational health, licensure, or
6 24 insurance laws.

6 25 c. Is reasonably believed by the health care worker to be
6 26 a violation of health and safety laws or a breach of public
6 27 safety that may lead to harm to patients, consumers, or
6 28 citizens, based upon the health care worker's professional
6 29 standards of care or professional code of ethics.

6 30 A health care worker making a disclosure which violates any
6 31 provision of the federal Health Insurance Portability and
6 32 Accountability Act, Pub. L. No. 104-191, shall not be entitled
6 33 to protection pursuant to this section nor entitled to civil

6 34 remedies which might otherwise be available pursuant to
6 35 subsection 7.

7 1 4. A health care worker disclosing in good faith the
7 2 information described in subsections 2 and 3 shall be presumed
7 3 to have established a prima facie case showing a violation of
7 4 subsection 2 or 3 by the health care worker's employer if the
7 5 individual or institution employing the health care worker
7 6 knows or has reason to know of the disclosure, and if
7 7 subsequent to and as a result of the disclosure, one or more
7 8 of the following actions were initiated by the employer:

7 9 a. Discharge of the health care worker from employment.

7 10 b. Failure by the employer to take action regarding a
7 11 health care worker's appointment to, promotion or proposed
7 12 promotion to, or receipt of any advantage or benefit in the
7 13 health care worker's position of employment.

7 14 c. Any adverse change to the health care worker's terms or
7 15 conditions of employment or any administrative, civil, or
7 16 criminal action or other effort that diminished the
7 17 professional competence, reputation, stature, or marketability
7 18 of the health care worker.

7 19 An employer shall have the burden of proof regarding any
7 20 attempt to show that actions taken pursuant to this subsection
7 21 were for a legitimate business purpose.

7 22 5. If an individual or institution employing a health care
7 23 worker is determined to have violated state health, safety, or
7 24 occupational health and health licensure laws or regulations,
7 25 or professional standards of care or a professional code of
7 26 ethics, after a disclosure pursuant to subsection 2 or 3
7 27 results in an action as described in subsection 4, such a
7 28 determination shall create a presumption of retaliation or
7 29 reprisal against the health care worker in violation of this
7 30 section. Disclosure of a reasonable belief that violations of
7 31 health and safety laws or breaches of public safety have
7 32 occurred that have caused or have a potential to cause harm to
7 33 patients, consumers, and citizens shall immediately trigger
7 34 the protection afforded by this section.

7 35 6. A person who violates this section commits a simple
8 1 misdemeanor and is subject to a civil action as follows:

8 2 a. A person who violates this section is liable to an
8 3 aggrieved health care worker for affirmative relief, including
8 4 reinstatement with or without back pay, or any other equitable
8 5 relief the court deems appropriate, including attorney fees
8 6 and costs, punitive or exemplary damages, and public notice of
8 7 the retaliation or reprisal undertaken against the health care
8 8 worker through publication in an official newspaper in the
8 9 city or county.

8 10 b. When a person commits, is committing, or proposes to
8 11 commit an act in violation of this section, an injunction may
8 12 be granted through an action in district court to prohibit the
8 13 person from continuing such acts. The action for injunctive
8 14 relief may be brought by an aggrieved health care worker or by
8 15 the county attorney.

8 16 7. In addition to any other penalties applicable to a
8 17 person who violates this section, an individual, institution,
8 18 or organization employing a person who violates this section
8 19 shall be subject to a civil penalty in the amount of one
8 20 thousand dollars per violation.

8 21 EXPLANATION

8 22 Division I of this bill concerns government accountability
8 23 relating to service contracts entered into by state
8 24 departments.

8 25 Code section 8.47, subsection 1, governing uniform terms
8 26 and conditions of service contracts, is amended to provide
8 27 that the terms shall include the requirement that executives
8 28 of the party receiving the contract not be paid more than 110
8 29 percent of the compensation provided a comparable state
8 30 employee and the authority of the department to terminate a
8 31 service contract if the party to the contract fails to comply
8 32 with the requirements of Code section 8.47.

8 33 Code section 8.47 is also amended by adding two new
8 34 subsections. New subsection 5 provides that a party seeking
8 35 to enter into a service contract shall submit information to
9 1 the department or establishment as to the governance of the
9 2 party; the training provided members of the governing body of
9 3 the party; procedures used to review management employees of
9 4 the party, review internal controls relating to accounting
9 5 processes, and review compliance with applicable laws; ethical
9 6 standards applicable to the party; and whistleblower
9 7 protections applicable to employees. The new subsection
9 8 requires the party to certify to the department that it is in
9 9 compliance with all laws applicable to the party and the

9 10 requirements of Code section 8.47.
9 11 New subsection 6 provides that a department shall consider
9 12 and review the information submitted by the party to determine
9 13 whether the party can comply with the requirements of the
9 14 service contract and shall have the authority to not enter
9 15 into the contract if the department determines that the party
9 16 cannot comply.
9 17 The bill provides that the changes to Code section 8.47
9 18 apply to service contracts entered into or renewed on or after
9 19 July 1, 2006.
9 20 Division II of the bill concerns the office of citizens'
9 21 aide and the employment rights of nonmerit system state
9 22 employees who make certain disclosures of information.
9 23 Code section 2A.7, concerning state government oversight
9 24 and program evaluation by the legislative services agency, is
9 25 amended to provide that the legislative services agency can
9 26 seek assistance from the office of citizens' aide in
9 27 conducting its evaluation.
9 28 Code section 2C.1, concerning the definition of "agency"
9 29 for purposes of the citizens' aide, is amended. The bill
9 30 expands the definition of the term "agency", within Code
9 31 chapter 2C, which governs the authority of the office of
9 32 citizens' aide. The bill defines "agency" to include legal or
9 33 administrative entities created pursuant to Code chapter 28E,
9 34 private entities providing individualized or public services
9 35 pursuant to a contract with a governmental body of the state
10 1 or local government, and any officer, employee, or member of
10 2 any of those entities who is performing official duties or
10 3 providing services enumerated in a contract. The expansion of
10 4 the definition brings the activities of those entities and
10 5 individuals who are performing services pursuant to a contract
10 6 with state or local government under the jurisdiction of the
10 7 office of citizens' aide under Code section 2C.9. In
10 8 addition, the amended definition maintains the exclusion of
10 9 courts and judges from the definition of "agency" but
10 10 eliminates the exclusion of judicial staff from the
10 11 definition.
10 12 Code section 2C.9, concerning the powers of the citizens'
10 13 aide, is amended to provide that the citizens' aide may
10 14 receive complaints concerning an employee's employment
10 15 relationship if the complaint alleges that the employee's
10 16 employment relationship was impacted by the employee's
10 17 disclosure of information made pursuant to Code section
10 18 8A.417, subsection 4, Code section 70A.28, or Code section
10 19 70A.29, commonly referred to as the state and local government
10 20 whistleblower laws.
10 21 Code section 70A.28, concerning disclosures of information
10 22 by state employees, is amended to provide that a nonmerit
10 23 system employee who is not otherwise covered by a collective
10 24 bargaining agreement may appeal adverse employment action
10 25 taken against the employee if the employee believes the
10 26 adverse action was taken in violation of the provisions of
10 27 this so-called whistleblower section permitting disclosures of
10 28 information. The bill provides that the employee may file an
10 29 appeal of the adverse action with the public employment
10 30 relations board within 30 calendar days of the adverse action.
10 31 The board is granted the authority to grant such relief,
10 32 including reinstatement and back pay, that the board finds
10 33 appropriate.
10 34 Division III of the bill provides protection for health
10 35 care workers against retaliation or reprisals resulting from
11 1 the disclosure of certain information under new Code section
11 2 147.105.
11 3 The new Code section provides that a health care worker who
11 4 discloses information to a state or federal board, department,
11 5 or agency, including the attorney general and law enforcement
11 6 personnel, as described in the bill, after a reasonable
11 7 opportunity to make a report and take corrective action has
11 8 transpired on the part of the individual or institution which
11 9 employs the health care worker and which is the subject of the
11 10 disclosure, shall be protected against reprisals or
11 11 retaliatory or punitive actions by the employer if disclosure
11 12 of the information is not otherwise prohibited by statute.
11 13 The bill provides that for this provision to apply, the
11 14 information disclosed shall constitute state-mandated health
11 15 data required to be submitted to a state agency, or inform a
11 16 state agency or entity of a violation of state health, safety,
11 17 occupational health, licensure, and insurance laws, or is
11 18 reasonably believed by the health care worker to be a
11 19 violation of health and safety laws or a breach of public
11 20 safety that may lead to harm to patients, consumers, or

11 21 citizens, based upon the health care worker's professional
11 22 standards of care and professional code of ethics. The bill
11 23 provides that this provision shall not be applicable to a
11 24 disclosure which constitutes a violation of the federal Health
11 25 Insurance Portability and Accountability Act.

11 26 The new Code section provides that a health care worker
11 27 disclosing in good faith this information shall be presumed to
11 28 have established a prima facie case if the employer knows or
11 29 has reason to know of the disclosure, and if following and as
11 30 a result of the disclosure the health care worker was
11 31 discharged from employment, or there was a failure by the
11 32 employer to take action regarding a health care worker's
11 33 appointment or promotion, or any adverse change to the health
11 34 care worker's terms or conditions of employment as well as any
11 35 administrative, civil, or criminal action or other effort that
12 1 diminishes the professional competence, reputation, stature,
12 2 or marketability of the health care worker. The bill provides
12 3 that the employer shall have the burden of proof regarding any
12 4 attempt to show that these actions were undertaken for a
12 5 legitimate business purpose.

12 6 The new Code section provides that if an employer is
12 7 determined to have violated state health, safety, or
12 8 occupational health or health licensure laws or regulations,
12 9 or professional standards of care or a professional code of
12 10 ethics, after a disclosure by a health care worker resulting
12 11 in an action taken against the worker as described in the
12 12 bill, this creates a presumption of retaliation or reprisal.
12 13 The bill provides that violations of health and safety laws or
12 14 breaches of public safety that have caused or have a potential
12 15 to cause harm to patients, consumers, and citizens immediately
12 16 trigger protection.

12 17 The new Code section provides that violations constitute a
12 18 simple misdemeanor, and may also be grounds for a civil
12 19 action. The bill provides that in such an action, an employer
12 20 may be liable to an aggrieved health care worker for
12 21 affirmative relief, including reinstatement with or without
12 22 back pay, and other equitable relief the court deems
12 23 appropriate, including attorney fees and costs, punitive or
12 24 exemplary damages, and public notice of the retaliation or
12 25 reprisal. The bill also provides for injunctive relief. The
12 26 bill provides that in addition to other penalties, an
12 27 individual, institution, or organization employing a person
12 28 found to be in violation of the bill's provisions shall be
12 29 subject to a civil penalty in the amount of \$1,000 per
12 30 violation.

12 31 LSB 6697XK 81
12 32 ec:nh/je/5.3